

BOIES SCHILLER FLEXNER LLP
RICHARD J. POCKER (NV Bar No. 3568)
300 South Fourth Street, Suite 800
Las Vegas, NV 89101
Telephone: 702.382.7300
Facsimile: 702.382.2755
rpocker@bsflp.com

BOIES SCHILLER FLEXNER LLP
WILLIAM ISAACSON (*pro hac vice*)
KAREN DUNN (*pro hac vice*)
1401 New York Avenue, NW, 11th Floor
Washington, DC 20005
Telephone: (202) 237-2727
Facsimile: (202) 237-6131
wisaacson@bsflp.com
kdunn@bsflp.com

BOIES SCHILLER FLEXNER LLP
STEVEN C. HOLTZMAN (*pro hac vice*)
BEKO O. REBLITZ-RICHARDSON
(*pro hac vice*)
44 Montgomery Street, 41st Floor
San Francisco, CA 94104
Telephone: 415.293.6800
Facsimile: 415.293.6899
sholtzman@bsflp.com
brichardson@bsflp.com

MORGAN, LEWIS & BOCKIUS LLP
BENJAMIN P. SMITH (*pro hac vice*)
JOHN A. POLITICO (*pro hac vice*)
SHARON R. SMITH (*pro hac vice*)
One Market, Spear Street Tower
San Francisco, CA 94105
Telephone: 415.442.1000
Facsimile: 415.442.1001
benjamin.smith@morganlewis.com
john.polito@morganlewis.com
sharon.smith@morganlewis.com

DORIAN DALEY (*pro hac vice*)
DEBORAH K. MILLER (*pro hac vice*)
JAMES C. MAROULIS (*pro hac vice*)
ORACLE CORPORATION
500 Oracle Parkway, M/S 5op7
Redwood City, CA 94070
Telephone: 650.506.4846
Facsimile: 650.506.7114
dorian.daley@oracle.com
deborah.miller@oracle.com
jim.maroulis@oracle.com

*Attorneys for Plaintiffs Oracle USA, Inc.,
Oracle America, Inc., and Oracle
International Corp.*

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ORACLE USA, INC.; a Colorado corporation;
ORACLE AMERICA, INC.; a Delaware
corporation; and ORACLE INTERNATIONAL
CORPORATION, a California corporation.

Plaintiffs,

V.

RIMINI STREET, INC., a Nevada corporation;
and SETH RAVIN, an individual,

Defendants.

Case No. 2:10-cv-0106-LRH-VCF

**DECLARATION OF JOHN A.
POLITO IN SUPPORT OF
ORACLE'S MOTION
ATTORNEYS' FEES ON APPEAL**

PUBLIC REDACTED VERSION

I, John A. Polito, declare as follows:

1. I am an attorney admitted to practice law in the State of California and before the Court in this action *pro hac vice*. I am a partner with Morgan, Lewis & Bockius LLP (“MLB”), counsel of record for Plaintiffs Oracle USA, Inc., Oracle America, Inc., and Oracle International Corporation (together, “Oracle” or “Plaintiffs”) in this action. I submit this declaration in support of Oracle’s motion for attorneys’ fees on appeal in the above-captioned lawsuit. The facts stated herein are based on my personal knowledge or on information provided to me by attorneys working under my direction.

Exhibits

2. Attached as Exhibit 1 are excerpts of true and correct copies of MLB's bills for August 2018, September 2018, November 2018, January 2019, March 2019, and June 2019 for MLB's work on the second appeal in this matter. Time entries for which Oracle does not seek reimbursement have been omitted or redacted from these excerpted invoices.

3. Exhibit 2 is a summary of the number of unredacted hours that each MLB attorney and legal support staff billed in these excerpted invoices, along with the dollar amounts billed for those hours for which Oracle seeks reimbursement.

4. Exhibit 3 is a summary and breakdown of the total amount of Oracle’s attorneys’ fees incurred on the second appeal in this case for which Oracle seeks reimbursement, including those paid to MLB, Boies Schiller Flexner LLP (“BSF”), and Kirkland & Ellis LLP (“K&E”).

5. Attached as Exhibit 4 are excerpts of true and correct copies of certain of the Rule 28(j) notices that Rimini submitted to the Ninth Circuit in Case No. 18-16554, together with certain of Oracle’s responses to those Rule 28(j) notices. These Rule 28(j) notices and responses are made available to the Court as follows:

Document	Ninth Circuit Filing	Location
Rimini's 28(j) letter filed June 21, 2019	Case No. 18-16554, ECF No. 43-1	Exhibit 4 at 1
Exhibits A-C to Rimini's 28(j) letter filed June 21, 2019	Case No. 18-16554, ECF No. 43-2 – 43-4	ECF No. 1231, 1231-1, 1231-4

1	Oracle's Jun 27, 2019 response	Case No. 18-16554, ECF No. 45	Exhibit 4 at 2-3
2	Rimini's 28(j) letter filed July 3, 2019	Case No. 18-16554, ECF No. 46-1	Exhibit 4 at 4
3	Exhibit A to Rimini's 28(j) letter filed July 3, 2019	Case No. 18-16554, ECF No. 46-2	ECF No. 1232
4	Exhibit B to Rimini's 28(j) letter filed July 3, 2019	Case No. 18-16554, ECF No. 46-3	Omitted
5	Rimini's 28(j) letter filed August 13, 2019	Case No. 18-16554, ECF No. 53-1	Exhibit 4 at 5
6	Exhibit A to Rimini's 28(j) letter filed August 13, 2019	Case No. 18-16554, ECF No. 53-2	Excerpted at Exhibit 4 at 6-9
7	Oracle's August 14, 2019 response	Case No. 18-16554, ECF No. 54	Exhibit 4 at 10

14 6. Attached as Exhibit 5 is a true and correct copy of Oracle's completed Form 9.

15 **Morgan Lewis Fees and Billing Practices**

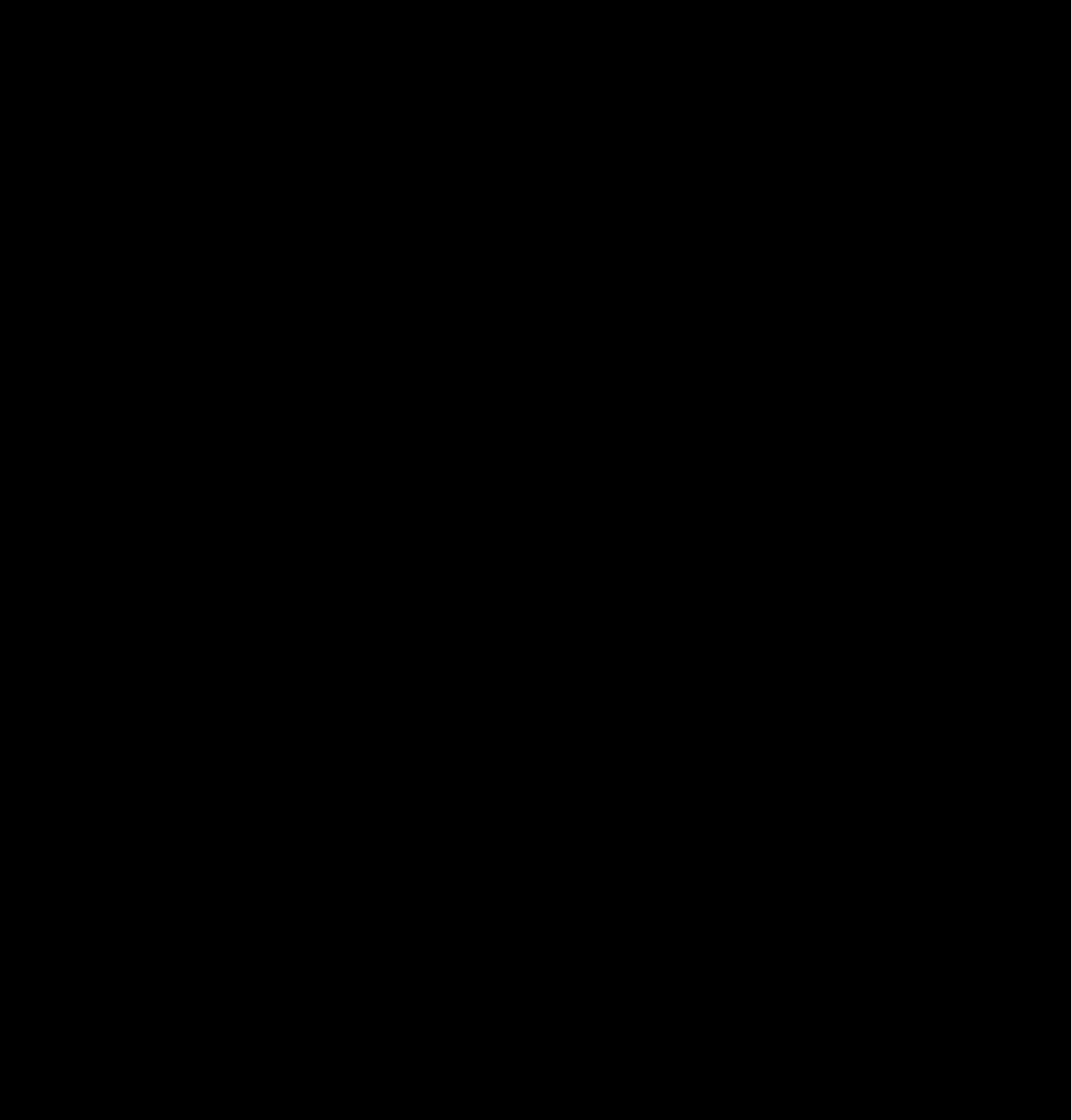
16 7. MLB has not yet received payment from Oracle on this matter for time in July 17 2019, August 2019. I estimate that the total of entries from each of those bills for which Oracle 18 will seek reimbursement will total approximately \$15,000 and \$3,000, respectively. MLB has not 19 yet invoiced Oracle on this matter for time in September 2019. I estimate that the total of entries 20 from that bill for which Oracle will seek reimbursement will be at least \$100,000. I understand 21 that the Court previously permitted Oracle to submit supplemental invoices in its previous motion 22 for attorneys' fees, and that Oracle may seek to do so again here, if so permitted.

23 8. Oracle paid the amounts due for all bills attached as excerpts to Exhibit 1, for the 24 amounts described in those bills and summarized in Exhibit 2.

25 REDACTED

26 10. The summary in Exhibit 2 does not include amounts that were paid and invoiced 27 for block-billed entries where all or part of the description of the work related to work other than 28 the appeal or this motion for attorneys' fees, or where all or part of the description needed to be

1 redacted due to privilege or other reasons.
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23 16. Oracle's in-house counsel have been directly involved in this matter since its
24 inception. They have supervised our work and reviewed our bills, and have often asked questions
25 about our bills. In some instances they have asked that we write off time spent on certain tasks,
26 though no write-offs were requested with respect to work on this matter relating to Rimini's 2018
27 appeal or to Oracle's Motion for Attorneys' Fees in the August 2018 to June 2019 time period.

28 17. In preparing this fee application, I have reviewed the billing records again for this

1 case and I obtained the further assistance of other lawyers on the team to review them. All
 2 timekeepers track their time by the day to the nearest tenth of an hour. Based on my review and
 3 involvement in this matter, the time billed by MLB attorneys and other timekeepers on this matter
 4 was reasonable in light of the needs of the case and the complexity of the issues.

5 18. At the inception of the *Rimini I* matter, the MLB attorneys were employed by
 6 Bingham McCutchen LLP (“Bingham”), where I was an associate, and which was counsel of
 7 record for Oracle. In November 2014, the Bingham attorneys working on this case joined MLB.
 8 MLB, and Bingham before it, have represented Oracle in a variety of matters for more than a
 9 decade.

10 19. On August 14, 2018, this Court granted Oracle \$28,502,246.40 in attorneys’ fees
 11 for work through trial, post-trial briefing, and a motion for attorney’s fees in this matter. ECF No.
 12 1164. Oracle was represented by Bingham, MLB, and BSF in this case at that time, and each
 13 firm charged similar rates to those charged by MLB, BSF, and K&E during the August 2018 to
 14 June 2019 time period.

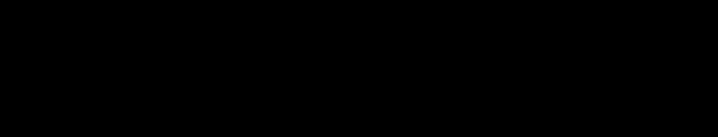
15 20. In an earlier case involving similar legal claims and of similar complexity, *Oracle*
 16 *USA, Inc. v. SAP AG*, N.D. Cal., Case No. 07-CV-1658, the parties reached an agreement which
 17 provided that the defendants pay Oracle’s attorneys’ fees in the sum of \$120 million. Oracle was
 18 represented by Bingham and BSF in that case and was charged similar rates to those charged for
 19 this case.

20 Scope of Appeal

21 21. MLB’s work on the appeal began in August 2018 after the district court issued
 22 orders granting Oracle’s motion for permanent injunction and attorneys’ fees, when Oracle and
 23 Rimini began corresponding on Rimini’s expected (and ultimately filed) notice of appeal and
 24 emergency motion to stay in the district court. *See* ECF Nos. 1164-67. MLB’s work on the
 25 appeal involved responding to (1) Rimini’s motion for a stay of the injunction in the Ninth
 26 Circuit, (2) Rimini’s opening brief on appeal, and (3) Rimini’s “Letters re Supplemental
 27 Authorities.” MLB further participated in preparations for oral argument before the Ninth
 28 Circuit, in filing a motion to transfer consideration of attorneys’ fees to this court, and in the

1 drafting of Oracle's Motion for Attorneys' Fees.

2 **Morgan Lewis Case Team**

3 22. I am a partner at Morgan Lewis in the San Francisco office. I graduated with a
 4 J.D. from Stanford Law School. I also graduated with a B.A. in Mathematics with Honors and a
 5 B.A. in Music with Honors from University of Michigan, Ann Arbor. I was named by the *Daily*
 6 *Journal* as an Associate to watch and one of California's Top 20 Under 40 Lawyers in 2014. I
 7 was also named by *Super Lawyers* as a Northern California Rising Star in 2013-2017 and as a
 8 Northern California Super Lawyer in 2018-19. Before becoming a lawyer, I had a career as a
 9 software engineer. My representations have included *Amazon.com, Inc. et al. v. Commissioner*,
 10 *Blackberry Ltd. et al. v. Cypress Semiconductor Corp.*, and *Oracle USA, Inc. v. SAP AG et al.*
 11 More details about my background and practice can be found at
 12 <http://www.morganlewis.com/bios/johnpolito>. I began working on this case in 2009. A summary
 13 of the time I spent on this matter and the value of that work is contained in Exhibit 2 hereto. My
 14 hourly rates for this matter (after any applicable discount) were as follows:
 15 
 16

17 23. **David Salmons** is partner at Morgan Lewis in the Washington, D.C. office. Mr.
 18 Salmons previously served six years as an assistant to the Solicitor General of the United States,
 19 where he received several awards, including the Department of Justice's John Marshall Award for
 20 Excellence in Handling Appeals (2006), the Office of the Secretary of Defense Award for
 21 Excellence (2005), and the Attorney General's Award for Excellence in Furthering the Interests
 22 of US National Security (2003). He graduated with a J.D. from The University of Chicago Law
 23 School, where he was the Editor-in-chief of the *University of Chicago Law Review*, and a B.A.
 24 from Brigham Young University, summa cum laude. He also clerked for the Honorable W.
 25 Eugene Davis of the U.S. Court of Appeals for the Fifth Circuit. Mr. Salmons has been
 26 recognized by *The Best Lawyers in America* (2011-2020) and by *Washington, DC Super Lawyers*.
 27 More details about Mr. Salmons background and practice can be found at
 28 <http://www.morganlewis.com/bios/davidsalmons>. Mr. Salmons began working on this case in

1 2015. A summary of the time he spent on this matter and the value of that work is contained in
2 Exhibit 2 hereto. Mr. Salmons's hourly rates for this matter (after any applicable discount) were
3 as follows:

4 [REDACTED]

5
6 24. **Benjamin Smith** is partner at Morgan Lewis in the San Francisco office. He
7 graduated with a J.D. from Harvard Law School, and with an A.B. from Stanford University. Mr.
8 Smith was named by *The Recorder* as a 2011 Attorney of the Year. He also received awards for
9 Top 10 Verdict of 2011 from *The Daily Journal* and IP Group of the Year 2011 from *LAW360*.
10 He has also been listed on *National Law Journal*'s "Defense Hot List." Mr. Smith's
11 representations have included *Asahi Kasei Pharma Corp. v. Actelion Ltd., et al.* More details
12 about Mr. Smith's background and practice can be found at
13 <http://www.morganlewis.com/bios/bpsmith>. Mr. Smith began working on this case in 2018. A
14 summary of the time he spent on this matter and the value of that work is contained in Exhibit 2
15 hereto. Mr. Smith's hourly rates for this matter (after any applicable discount) were as follows:

16 [REDACTED]

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18 25. **Sharon Smith** is partner at Morgan Lewis in the San Francisco office. She
19 graduated with a J.D. from University of California, Davis School of Law, and with a B.A. from
20 University of California at Berkeley. Ms. Smith's representations have included *Asahi Kasei*
21 *Pharma Corp. v. Actelion Ltd., et al.* More details about Ms. Smith's background and practice
22 can be found at <http://www.morganlewis.com/bios/srsmith>. Ms. Smith began working on this
23 case in 2018. A summary of the time she spent on this matter and the value of that work is
24 contained in Exhibit 2 hereto. Ms. Smith's hourly rates for this matter (after any applicable
25 discount) were as follows:

26 [REDACTED]

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28 26. **Zachary Hill** is an associate at Morgan Lewis in the San Francisco office. He

1 graduated with a J.D. from Harvard Law School in 2010, a Master's degree in Philosophy from
 2 Northwestern University in 2007, and a B.A. in Philosophy from the University of Chicago in
 3 2004. Mr. Hill's representations have included *Oracle USA, Inc. et al. v. SAP AG et al.* More
 4 details about Mr. Hill's background and practice can be found at
 5 <http://www.morganlewis.com/bios/zacharyhill>. Mr. Hill has been working on this case since
 6 2011. A summary of the time Mr. Hill spent on this matter and the value of that work is
 7 contained in Exhibit 2 hereto. Mr. Hill's hourly rates for this matter (after any applicable
 8 discount) were as follows:

9 [REDACTED]

10

11 27. **James Nelson** is an associate at Morgan Lewis in the Washington D.C. office. He
 12 graduated with a J.D. from Harvard Law School in 2016, cum laude, and B.A. in Government,
 13 International Politics and Policy, summa cum laude, from Patrick Henry College in 2013. At
 14 Harvard, Mr. Nelson was an Editor and Forum Editor of the *Harvard Law Review* and an
 15 Executive Editor of the *Harvard Journal of Law and Public Policy*. Mr. Nelson also received a
 16 Blackstone Legal Fellowship. Before joining Morgan Lewis, Mr. Nelson clerked for the
 17 Honorable Thomas H. Hardiman of the U.S. Court of Appeals for the Third Circuit. More details
 18 about Mr. Nelson's background and practice can be found at
 19 <http://www.morganlewis.com/bios/jamesnelson>. Mr. Nelson has been working on this case since
 20 2018. A summary of the time Mr. Nelson spent on this matter and the value of that work is
 21 contained in Exhibit 2 hereto. Mr. Nelson's hourly rates for this matter (after any applicable
 22 discount) were as follows:

23 [REDACTED]

24

25

26 28. **Lisa Lee** is a paralegal at Morgan Lewis in the San Francisco office. Ms. Lee has
 27 had over 22 years of paralegal experience. Ms. Lee's had previously assisted attorneys on *Oracle*
USA, Inc. et al. v. SAP AG et al. A summary of the time Ms. Lee spent on this matter and the
 28 value of that work is contained in Exhibit 2 hereto. Ms. Lee's hourly rates for this matter (after

1 any applicable discount) were as follows:
2 [REDACTED]
3

4 29. **Elizabeth Hong** is an appellate paralegal at Morgan Lewis in the Washington,
5 D.C. office. A summary of the time Ms. Hong spent on this matter and the value of that work is
6 contained in Exhibit 2 hereto. Ms. Hong's hourly rates for this matter (after any applicable
7 discount) were as follows:
8 [REDACTED]
9

10 I declare under penalty of perjury under the laws of the United States that the foregoing is
11 true and correct.

12 Executed September 20, 2019 in Berkeley, California.

13 DATED: September 20, 2019

14 MORGAN, LEWIS & BOCKIUS LLP

15 By: /s/ John A. Polito
16 John A. Polito

17 Attorneys for Plaintiffs Oracle USA, Inc.,
18 Oracle America, Inc. and Oracle International
19 Corporation

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of September 2019, I electronically transmitted the foregoing **DECLARATION OF JOHN A. POLITICO IN SUPPORT OF ORACLE'S MOTION FOR ATTORNEYS' FEES ON APPEAL** to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all counsel in this matter; all counsel being registered to receive Electronic Filing.

DATED: September 20, 2019

MORGAN, LEWIS & BOCKIUS LLP

By: /s/ John A. Polito
John A. Polito

Attorneys for Plaintiffs Oracle USA, Inc.,
Oracle America, Inc. and Oracle International
Corporation